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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California American Water Company (U 210 W) for an order authorizing it to increase its rates for water service in its Monterey District to increase revenues by \$9,456,100 or 32.88% in the year 2006; \$1,894,100 or 4.95% in the year 2007; and \$1,574,600 or 3.92% in the year 2008; and for an order authorizing sixteen Special Requests with revenue requirements of \$3,815,900 in the year 2006, \$5,622,300 in the year 2007, and \$8,720,500 in the year 2008; the total increase in rates for water service combined with the sixteen Special Requests could increase revenues by \$13,272,000 or 46.16% in the year 2006; 7,516,400 or 17.86% in the year 2007; and \$10,295,100 or 20.73% in the year 2008.

Application 05-02-012
(Filed February 28, 2005)

In the Matter of the Application of California-American Water Company (U 210 W) for Authorization to Increase its Rates for Water Service in its Felton District to increase revenues by \$796,400 or 105.2% in the year 2006; \$53,600 or 3.44% in the year 2007; and \$16,600 or 1.03% in the year 2008; and for an order authorizing two Special Requests.

Application 05-02-013
(Filed February 28, 2005)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files its Reply to the Comments of California American Water ("Cal Am") on the Proposed Decision of Administrative Law Judge ("ALJ") Walwyn.

I. MOST OF CAL AM'S COMMENTS ARE JUST REARGUMENT AND MUST BE GIVEN NO WEIGHT

Rule 14.3(c) of the Commission's Rules require comments on Proposed Decisions to "focus on factual, legal or technical errors." Instead of citing to such errors, Cal Am's comments are replete with phrases like the PD is burdensome, unnecessary, onerous, unreasonable, or inequitable. Such phrases do not describe legal, technical, or factual error, but instead just express Cal Am's displeasure with the outcome of the PD.

As the Rule 14.3 (c) plainly states, "comments which merely reargue positions taken in briefs will be accorded no weight." The majority of Cal Am's comments must be accorded no weight and must but be ignored.

II. SAN CLEMENTE DAM

Cal Am does not cite to legal, technical, or factual errors when arguing against the PD's holding that San Clemente Dam costs should be booked to a memorandum account. Instead, Cal Am argues that because the past Monterey GRC decision found that the San Clemente Dam expenses should be given construction work in progress treatment ("CWIP") this decision should find the same. The Commission committed neither a legal nor a factual error when it reevaluated the project and determined that memorandum account treatment is appropriate especially given the uncertainty of the project and the questionable future utility of the dam. Moreover, the Commission has subsequently found that CWIP treatment is only appropriate for short-term water utility construction and not for long-term projects with uncertainties. (D.03-09-022, pp. 22-23)

Cal Am argues that the cap the PD places on memorandum account costs is unfair and "not necessary" and that the cap only serves to limit Cal Am's ability to recover costs it has no choice to incur. (Cal Am, p. 6.) Again Cal Am's displeasure with the fairness and necessity of the cap does not represent legal or factual error. Moreover, Cal Am's claim that the cap serves only to limit its ability to recover costs is not true. The cap will provide an incentive to management to keep costs to a minimum.

Cal Am inaccurately argues that the memo account will limit its ability to earn a return. (*Id.*, p. 5.) The reality is quite different: AFDUC will later become capitalized if the project is found reasonable, and Cal Am will earn a return on the AFDUC.

Finally, Cal Am also argues the cap is not appropriate because DRA has not challenged its consultant's qualifications, methodology, or specific studies. (*Id.* at p. 6.) In fact, DRA's recommendation for a reduction to certain cost estimates is a direct challenge to Cal Am's consultant's methodology and its study. (*See* DRA Reply Brief, p. 5.)

III. MEMORANDUM ACCOUNTS FOR SWRCB AND ESA FINES

Cal Am argues that the PD's finding that Cal Am has considerable management control over whether it incurs ESA or SWRCB fines is incorrect. However, the PD documents how such fines are within Cal Am's control. (PD pp. 60-61, 63-64.) Cal Am argues that it is at risk for ESA and SWRCB fines "because it is drawing from the Carmel River to provide water to its customers." (Cal Am, p. 8.) However, under this argument, a customer will always be at risk for fines regardless of why those fines occurred just because Cal Am is drawing from the river.

Cal Am wrongfully claims that the threat of ESA fines is greater than in the past and thus a memo account is needed. (*Id.* at p. 10.) However, Cal Am has recently demonstrated that the risk of ESA fines is under its control. On July 21, 2006, Cal Am filed Advice Letter 652-W requesting authority to establish a memorandum account for payments made under a settlement with the National Oceanic and Atmospheric Administration ("NOAA"). This agreement requires Cal Am to pay up to \$10.1 million to NOAA for steelhead mitigation on the Carmel River over the next six years in exchange for continuous "take" coverage through June 2013, or until Cal Am completes the Coastal Water Project. Essentially, this settlement insures Cal Am against being prosecuted for potential ESA violations as a result of its pumping operations or water withdrawals from the Carmel River through June 2013. The Advice Letter became effective on August 24, 2006. This agreement demonstrates Cal Am has the ability to avoid ESA fines.

Finally, Cal Am argues that it should be afforded memo account treatment for fines because “the threat of fines has a deterrent effect and encourages customers to conserve” and without it there is not incentive for customers to conserve. (*Id.* at p. 9.) DRA could raise a similar argument that the threat of fines will provide Cal Am an incentive to use all tools it had available to control water usage. Perhaps the threat of fines would have caused Cal Am to perform the water audits for commercial customers it was supposed to perform. Moreover, it is incorrect to say there is no incentive for customers, because the PD adopts Cal Am’s request for emergency rates that penalize users that do not conserve.

IV. RATE DESIGN

Cal Am’s Comments on rate design again fail to cite to errors in the PD but instead raise policy arguments for why its proposed rate design should be adopted. For the Monterey District, Cal Am argues that “[e]quity requires that the conservation tariff be applied equally to all commercial customers – not just a few for whom audits have been conducted.” Essentially, Cal Am is asking the Commission to adopt Cal Am’s proposal because Cal Am did not perform the water audits it was required to do. Cal Am should not be rewarded for this failure. Moreover, once the audits are completed, there will no longer be any inequity.

In response to the PD’s conclusion that the Felton rate design should remain as it is, Cal Am again just presents policy arguments and fails to cite to any legal, technical or factual error in the PD. The PD correctly finds the current rate design provides an incentive for conservation by the average customers and should be retained.¹

¹ The current rate design benefits those who use the least water while Cal Am’s proposal allocates 25 units for the first block, three times the average usage of 8 to 9 units. Thus under Cal Am’s proposal, the average customer could triple their usage and not be penalized with higher rates. (*See* DRA Opening Brief, p. 52.)

V. OTHER ISSUES

- DRA did not use a “top down” method of escalation for Felton O&M costs as Cal Am states. (*Id.*, p. 15.) Ms. Brooks analyzed O&M costs and presented her recommendations in Exhibit 90, Chapter 3.
- DRA supports the PD’s reporting requirements. Cal Am argues that the reporting requirements contradict the Water Action Plan’s objective of streamlining the regulatory process. (*Id.*, p. 20.) Streamlining does not mean doing away with regulation. Moreover, the Water Action Plan does not restrict adopting reporting requirements, and in fact such reporting can be a way to streamline the process. The PD has justified the need for the additional reporting requirements. Cal Am fails to cite any legal, technical or factual errors with the requirements.
- DRA supports the PD’s requirement for Cal Am to enter a formal agreement with MPWMD on conservation activities. Cal Am’s argument that the requirement is an unnecessary burden is not a legal, technical or factual error and must be ignored.
- DRA supports the PD’s adoption of DRA’s low-income program for Felton customers. Cal Am’s Comments are limited to policy arguments against adopting DRA’s proposal and do not cite to any legal, technical or factual error with the PD.
- DRA supports the PD’s 50 percent cap on rate increases for Felton. Cal Am has not provided justification for why the Commission should not try to limit the rate shock applicable to Felton residents.

VI. CONCLUSION

As discussed above, Cal Am’s comments are reargument and pursuant to Rule 14.3(d) must be given no weight.

Respectfully submitted,

/s/MONICA MCCRARY

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October 31, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES** in **Application 05-02-012 *et al.*** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record that provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the **31st of October 2006** at San Francisco, California.

/s/ Joanne Lark
Joanne Lark

N O T I C E

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